

111TH CONGRESS  
2D SESSION

# H. R. 1065

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## AN ACT

To resolve water rights claims of the White Mountain Apache  
Tribe in the State of Arizona, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “White Mountain  
3 Apache Tribe Water Rights Quantification Act of 2010”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) proceedings to determine the nature and ex-  
7 tent of the water rights of the White Mountain  
8 Apache Tribe, members of the Tribe, the United  
9 States, and other claimants are pending in—

10 (A) the consolidated civil action in the Su-  
11 perior Court of the State of Arizona for the  
12 County of Maricopa styled In re the General  
13 Adjudication of All Rights To Use Water In  
14 The Gila River System and Source, W-1 (Salt),  
15 W-2 (Verde), W-3 (Upper Gila), W-4 (San  
16 Pedro); and

17 (B) the civil action pending in the Superior  
18 Court of the State of Arizona for the County of  
19 Apache styled In re the General Adjudication of  
20 All Rights to Use Water in the Little Colorado  
21 River System and Source and numbered CIV-  
22 6417;

23 (2) a final resolution of those proceedings  
24 might—

25 (A) take many years;

26 (B) entail great expense; and

1 (C) prolong uncertainty concerning the  
2 availability of water supplies;

3 (3) the Tribe, non-Indian communities located  
4 near the reservation of the Tribe, and other Arizona  
5 water users have entered into the WMAT Water  
6 Rights Quantification Agreement—

7 (A) to permanently quantify the water  
8 rights of the Tribe, members of the Tribe, and  
9 the United States in its capacity as trustee for  
10 the Tribe and members in accordance with the  
11 Agreement; and

12 (B) to seek funding, in accordance with  
13 applicable law, for the implementation of the  
14 Agreement;

15 (4) it is the policy of the United States to quan-  
16 tify and settle Indian water rights claims, and to  
17 promote Indian self-determination and economic  
18 self-sufficiency, without lengthy and costly litigation,  
19 if practicable;

20 (5) certainty concerning the extent of the water  
21 rights of the Tribe will—

22 (A) provide opportunities for economic de-  
23 velopment of all parties to the proceeding; and

24 (B) assist the Tribe to achieve self-deter-  
25 mination and self-sufficiency; and

1           (6) in keeping with the trust responsibility of  
2           the United States to Indian tribes, and to promote  
3           tribal sovereignty and economic self-sufficiency, it is  
4           appropriate that the United States implement the  
5           Agreement.

6           (b) PURPOSES.—The purposes of this Act are—

7           (1) to authorize, ratify, and confirm the Agree-  
8           ment;

9           (2) to authorize and direct the Secretary to exe-  
10          cute the Agreement and carry out all obligations of  
11          the Secretary under the Agreement;

12          (3) to authorize the actions and appropriations  
13          necessary for the United States to meet the obliga-  
14          tions of the United States under the Agreement and  
15          this Act; and

16          (4) to permanently resolve certain damage  
17          claims and all water rights claims among—

18                  (A) the Tribe and its members;

19                  (B) the United States in its capacity as  
20          trustee for the Tribe and its members;

21                  (C) the parties to the Agreement; and

22                  (D) all other claimants in the proceedings  
23          referred to in subsection (a)(1).

24 **SEC. 3. DEFINITIONS.**

25          In this Act:

1 (1) AGREEMENT.—The “Agreement” means—

2 (A) the WMAT Water Rights Quantifica-  
3 tion Agreement dated January 13, 2009; and

4 (B) any amendment or exhibit (including  
5 exhibit amendments) to that agreement that  
6 are—

7 (i) made in accordance with this Act;

8 or

9 (ii) otherwise approved by the Sec-  
10 retary.

11 (2) BUREAU.—The term “Bureau” means the  
12 Bureau of Reclamation.

13 (3) CAP.—The term “CAP” means the rec-  
14 lamation project authorized and constructed by the  
15 United States in accordance with title III of the Col-  
16 orado River Basin Project Act (43 U.S.C. 1521 et  
17 seq.).

18 (4) CAP CONTRACTOR.—The term “CAP con-  
19 tractor” means an individual or entity that has en-  
20 tered into a long-term contract (as that term is used  
21 in the repayment stipulation) with the United States  
22 for delivery of water through the CAP system.

23 (5) CAP FIXED OM&R CHARGE.—The term  
24 “CAP fixed OM&R charge” has the meaning given  
25 the term in the repayment stipulation.

1           (6) CAP M&I PRIORITY WATER.—The term  
2           “CAP M&I priority water” means the CAP water  
3           having a municipal and industrial delivery priority  
4           under the repayment contract.

5           (7) CAP SUBCONTRACTOR.—The term “CAP  
6           subcontractor” means an individual or entity that  
7           has entered into a long-term subcontract (as that  
8           term is used in the repayment stipulation) with the  
9           United States and the District for the delivery of  
10          water through the CAP system.

11          (8) CAP SYSTEM.—The term “CAP system”  
12          means—

13                 (A) the Mark Wilmer Pumping Plant;

14                 (B) the Hayden-Rhodes Aqueduct;

15                 (C) the Fannin-McFarland Aqueduct;

16                 (D) the Tucson Aqueduct;

17                 (E) any pumping plant or appurtenant  
18                 works of a feature described in any of subpara-  
19                 graphs (A) through (D); and

20                 (F) any extension of, addition to, or re-  
21                 placement for a feature described in any of sub-  
22                 paragraphs (A) through (E).

23          (9) CAP WATER.—The term “CAP water”  
24          means “Project Water” (as that term is defined in  
25          the repayment stipulation).

1           (10) CONTRACT.—The term “Contract”  
2 means—

3           (A) the proposed contract between the  
4 Tribe and the United States attached as exhibit  
5 7.1 to the Agreement and numbered 08–XX–  
6 30–W0529; and

7           (B) any amendments to that contract.

8           (11) DISTRICT.—The term “District” means  
9 the Central Arizona Water Conservation District, a  
10 political subdivision of the State that is the con-  
11 tractor under the repayment contract.

12           (12) ENFORCEABILITY DATE.—The term “en-  
13 forceability date” means the date described in sec-  
14 tion 9(d)(1).

15           (13) INDIAN TRIBE.—The term “Indian tribe”  
16 has the meaning given the term in section 4 of the  
17 Indian Self-Determination and Education Assistance  
18 Act (25 U.S.C. 450b).

19           (14) INJURY TO WATER RIGHTS.—

20           (A) IN GENERAL.—The term “injury to  
21 water rights” means an interference with, dimi-  
22 nution of, or deprivation of, a water right under  
23 Federal, State, or other law.

24           (B) INCLUSIONS.—The term “injury to  
25 water rights” includes—

1 (i) a change in the groundwater table;

2 and

3 (ii) any effect of such a change.

4 (C) EXCLUSION.—The term “injury to  
5 water rights” does not include any injury to  
6 water quality.

7 (15) LOWER COLORADO RIVER BASIN DEVELOP-  
8 MENT FUND.—The term “Lower Colorado River  
9 Basin Development Fund” means the fund estab-  
10 lished by section 403 of the Colorado River Basin  
11 Project Act (43 U.S.C. 1543).

12 (16) OFF-RESERVATION TRUST LAND.—The  
13 term “off-reservation trust land” means land—

14 (A) located outside the exterior boundaries  
15 of the reservation that is held in trust by the  
16 United States for the benefit of the Tribe as of  
17 the enforceability date; and

18 (B) depicted on the map attached to the  
19 Agreement as exhibit 2.57.

20 (17) OPERATING AGENCY.—The term “Oper-  
21 ating Agency” means the 1 or more entities author-  
22 ized to assume responsibility for the care, operation,  
23 maintenance, and replacement of the CAP system.

24 (18) REPAYMENT CONTRACT.—The term “re-  
25 payment contract” means—



1 (A) the contract between the United States  
2 and the District for delivery of water and re-  
3 payment of the costs of the CAP, numbered  
4 14-06-W-245 (Amendment No. 1), and dated  
5 December 1, 1988; and

6 (B) any amendment to, or revision of, that  
7 contract.

8 (19) REPAYMENT STIPULATION.—The term  
9 “repayment stipulation” means the stipulated judg-  
10 ment and the stipulation for judgment (including  
11 any exhibits to those documents) entered on Novem-  
12 ber 21, 2007, in the United States District Court  
13 for the District of Arizona in the consolidated civil  
14 action styled Central Arizona Water Conservation  
15 District v. United States, et al., and numbered CIV  
16 95-625-TUC-WDB (EHC) and CIV 95-1720-  
17 PHX-EHC.

18 (20) RESERVATION.—

19 (A) IN GENERAL.—The term “reservation”  
20 means the land within the exterior boundary of  
21 the White Mountain Indian Reservation estab-  
22 lished by the Executive order dated November  
23 9, 1871, as modified by subsequent Executive  
24 orders and Acts of Congress—

1 (i) known on the date of enactment of  
2 this Act as the “Fort Apache Reservation”  
3 pursuant to the Act of June 7, 1897 (30  
4 Stat. 62, chapter 3); and

5 (ii) generally depicted on the map at-  
6 tached to the Agreement as exhibit 2.81.

7 (B) NO EFFECT ON DISPUTE OR AS ADMIS-  
8 SION.—The depiction of the reservation de-  
9 scribed in subparagraph (A)(ii) shall not—

10 (i) be used to affect any dispute be-  
11 tween the Tribe and the United States  
12 concerning the legal boundary of the res-  
13 ervation; and

14 (ii) constitute an admission by the  
15 Tribe with regard to any dispute between  
16 the Tribe and the United States con-  
17 cerning the legal boundary of the reserva-  
18 tion.

19 (21) SECRETARY.—The term “Secretary”  
20 means the Secretary of the Interior.

21 (22) STATE.—The term “State” means the  
22 State of Arizona.

23 (23) TRIBAL CAP WATER.—The term “tribal  
24 CAP water” means the CAP water to which the  
25 Tribe is entitled pursuant to the Contract.

1           (24) TRIBAL WATER RIGHTS.—The term “tribal  
2       water rights” means the water rights of the Tribe  
3       described in paragraph 4.0 of the Agreement.

4           (25) TRIBE.—The term “Tribe” means the  
5       White Mountain Apache Tribe organized under sec-  
6       tion 16 of the Act of June 18, 1934 (commonly  
7       known as the “Indian Reorganization Act”) (25  
8       U.S.C. 476).

9           (26) WATER RIGHT.—The term “water right”  
10      means any right in or to groundwater, surface  
11      water, or effluent under Federal, State, or other law.

12          (27) WMAT RURAL WATER SYSTEM.—The  
13      term “WMAT rural water system” means the mu-  
14      nicipal, rural, and industrial water diversion, stor-  
15      age, and delivery system described in section 7.

16          (28) YEAR.—The term “year” means a cal-  
17      endar year.

18 **SEC. 4. APPROVAL OF AGREEMENT.**

19      (a) APPROVAL.—

20          (1) IN GENERAL.—Except to the extent that  
21      any provision of the Agreement conflicts with a pro-  
22      vision of this Act, the Agreement is authorized, rati-  
23      fied, and confirmed.

24          (2) AMENDMENTS.—Any amendment to the  
25      Agreement is authorized, ratified, and confirmed, to

1 the extent that such an amendment is executed to  
2 make the Agreement consistent with this Act.

3 (b) EXECUTION OF AGREEMENT.—To the extent that  
4 the Agreement does not conflict with this Act, the Sec-  
5 retary shall—

6 (1) execute the Agreement (including signing  
7 any exhibit to the Agreement requiring the signature  
8 of the Secretary); and

9 (2) execute any amendment to the Agreement  
10 necessary to make the Agreement consistent with  
11 this Act.

12 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

13 (1) ENVIRONMENTAL COMPLIANCE.—In imple-  
14 menting the Agreement, the Secretary shall prompt-  
15 ly comply with all applicable requirements of—

16 (A) the National Environmental Policy Act  
17 of 1969 (42 U.S.C. 4321 et seq.);

18 (B) the Endangered Species Act of 1973  
19 (16 U.S.C. 1531 et seq.);

20 (C) all other applicable Federal environ-  
21 mental laws; and

22 (D) all regulations promulgated under the  
23 laws described in subparagraphs (A) through  
24 (C).

25 (2) EXECUTION OF AGREEMENT.—

1 (A) IN GENERAL.—Execution of the Agree-  
2 ment by the Secretary under this section shall  
3 not constitute a major Federal action under the  
4 National Environmental Policy Act of 1969 (42  
5 U.S.C. 4321 et seq.).

6 (B) ENVIRONMENTAL COMPLIANCE.—The  
7 Secretary shall carry out all necessary environ-  
8 mental compliance required by Federal law in  
9 implementing the Agreement.

10 (3) LEAD AGENCY.—The Bureau shall serve as  
11 the lead agency with respect to ensuring environ-  
12 mental compliance associated with the WMAT rural  
13 water system.

14 **SEC. 5. WATER RIGHTS.**

15 (a) TREATMENT OF TRIBAL WATER RIGHTS.—The  
16 tribal water rights—

17 (1) shall be held in trust by the United States  
18 in perpetuity; and

19 (2) shall not be subject to forfeiture or aban-  
20 donment.

21 (b) REALLOCATION.—

22 (1) IN GENERAL.—In accordance with this Act  
23 and the Agreement, the Secretary shall reallocate to  
24 the Tribe, and offer to enter into a contract with the

1 Tribe for the delivery in accordance with this section  
2 of—

3 (A) an annual entitlement to 23,782 acre-  
4 feet per year of CAP water that has a non-In-  
5 dian agricultural delivery priority (as defined in  
6 the Contract) in accordance with section  
7 104(a)(1)(A)(iii) of the Arizona Water Settle-  
8 ments Act (Public Law 108–451; 118 Stat.  
9 3488), of which—

10 (i) 3,750 acre-feet per year shall be  
11 firmied by the United States for the benefit  
12 of the Tribe for the 100-year period begin-  
13 ning on January 1, 2008, with priority  
14 equivalent to CAP M&I priority water, in  
15 accordance with section 105(b)(1)(B) of  
16 that Act (118 Stat. 3492); and

17 (ii) 3,750 acre-feet per year shall be  
18 firmied by the State for the benefit of the  
19 Tribe for the 100-year period beginning on  
20 January 1, 2008, with priority equivalent  
21 to CAP M&I priority water, in accordance  
22 with section 105(b)(2)(B) of that Act (118  
23 Stat. 3492); and

24 (B) an annual entitlement to 1,218 acre-  
25 feet per year of the water—

1 (i) acquired by the Secretary through  
2 the permanent relinquishment of the  
3 Harquahala Valley Irrigation District CAP  
4 subcontract entitlement in accordance with  
5 the contract numbered 3–07–30–W0290  
6 among the District, Harquahala Valley Ir-  
7 rigation District, and the United States;  
8 and

9 (ii) converted to CAP Indian Priority  
10 water (as defined in the Contract) pursu-  
11 ant to the Fort McDowell Indian Commu-  
12 nity Water Rights Settlement Act of 1990  
13 (Public Law 101–628; 104 Stat. 4480).

14 (2) AUTHORITY OF TRIBE.—Subject to approval  
15 by the Secretary under section 6(a)(1), the Tribe  
16 shall have the sole authority to lease, distribute, ex-  
17 change, or allocate the tribal CAP water described  
18 in paragraph (1).

19 (c) WATER SERVICE CAPITAL CHARGES.—The Tribe  
20 shall not be responsible for any water service capital  
21 charge for tribal CAP water.

22 (d) ALLOCATION AND REPAYMENT.—For the pur-  
23 pose of determining the allocation and repayment of costs  
24 of any stages of the CAP constructed after November 21,  
25 2007, the costs associated with the delivery of water de-

1 scribed in subsection (b), regardless of whether the water  
2 is delivered for use by the Tribe or in accordance with  
3 any assignment, exchange, lease, option to lease, or other  
4 agreement for the temporary disposition of water entered  
5 into by Tribe, shall be—

6 (1) nonreimbursable; and

7 (2) excluded from the repayment obligation of  
8 the District.

9 (e) WATER CODE.—Not later than 18 months after  
10 the enforceability date, the Tribe shall enact a water code  
11 that—

12 (1) governs the tribal water rights; and

13 (2) includes, at a minimum—

14 (A) provisions requiring the measurement,  
15 calculation, and recording of all diversions and  
16 depletions of water on the reservation and on  
17 off-reservation trust land;

18 (B) terms of a water conservation plan, in-  
19 cluding objectives, conservation measures, and  
20 an implementation timeline;

21 (C) provisions requiring the approval of  
22 the Tribe for the severance and transfer of  
23 rights to the use of water from historically irri-  
24 gated land identified in paragraph 11.3.2.1 of  
25 the Agreement to diversions and depletions on



1 other non-historically irrigated land not located  
2 on the watershed of the same water source; and  
3 (D) provisions requiring the authorization  
4 of the Tribe for all diversions of water on the  
5 reservation and on off-reservation trust land by  
6 any individual or entity other than the Tribe.

7 **SEC. 6. CONTRACT.**

8 (a) IN GENERAL.—The Secretary shall enter into the  
9 Contract, in accordance with the Agreement, to provide,  
10 among other things, that—

11 (1) the Tribe, on approval of the Secretary,  
12 may—

13 (A) enter into contracts or options to lease,  
14 contracts to exchange, or options to exchange  
15 tribal CAP water in Maricopa, Pinal, Pima, and  
16 Yavapai Counties in the State providing for the  
17 temporary delivery to any individual or entity of  
18 any portion of the tribal CAP water, subject to  
19 the condition that—

20 (i) the term of the contract or option  
21 to lease shall not be longer than 100 years;

22 (ii) the contracts or options to ex-  
23 change shall be for the term provided in  
24 the contract or option; and

1                   (iii) a lease or option to lease pro-  
2                   viding for the temporary delivery of tribal  
3                   CAP water shall require the lessee to pay  
4                   to the Operating Agency all CAP fixed  
5                   OM&R charges and all CAP pumping en-  
6                   ergy charges (as defined in the repayment  
7                   stipulation) associated with the leased  
8                   water; and

9                   (B) renegotiate any lease at any time dur-  
10                  ing the term of the lease, subject to the condi-  
11                  tion that the term of the renegotiated lease  
12                  shall not exceed 100 years;

13                (2) no portion of the tribal CAP water may be  
14                permanently alienated;

15                (3)(A) the Tribe (and not the United States in  
16                any capacity) shall be entitled to all consideration  
17                due to the Tribe under any contract or option to  
18                lease or exchange tribal CAP water entered into by  
19                the Tribe; and

20                (B) the United States (in any capacity) has no  
21                trust or other obligation to monitor, administer, or  
22                account for, in any manner—

23                   (i) any funds received by the Tribe as con-  
24                   sideration under a contract or option to lease or  
25                   exchange tribal CAP water; or

1 (ii) the expenditure of those funds;

2 (4)(A) all tribal CAP water shall be delivered  
3 through the CAP system; and

4 (B) if the delivery capacity of the CAP system  
5 is significantly reduced or anticipated to be signifi-  
6 cantly reduced for an extended period of time, the  
7 Tribe shall have the same CAP delivery rights as a  
8 CAP contractor or CAP subcontractor that is al-  
9 lowed to take delivery of water other than through  
10 the CAP system;

11 (5) the Tribe may use tribal CAP water on or  
12 off the reservation for any purpose;

13 (6) as authorized by subsection (f)(2)(A) of sec-  
14 tion 403 of the Colorado River Basin Project Act  
15 (43 U.S.C. 1543) and to the extent that funds are  
16 available in the Lower Colorado River Basin Devel-  
17 opment Fund established by subsection (a) of that  
18 section, the United States shall pay to the Operating  
19 Agency the CAP fixed OM&R charges associated  
20 with the delivery of tribal CAP water (except in the  
21 case of tribal CAP water leased by any individual or  
22 entity);

23 (7) the Secretary shall waive the right of the  
24 Secretary to capture all return flow from project ex-

1 change water flowing from the exterior boundary of  
2 the reservation; and

3 (8) no CAP water service capital charge shall  
4 be due or payable for the tribal CAP water, regard-  
5 less of whether the water is delivered for use by the  
6 Tribe or pursuant to a contract or option to lease  
7 or exchange tribal CAP water entered into by the  
8 Tribe.

9 (b) REQUIREMENTS.—The Contract shall be—

10 (1) for permanent service (within the meaning  
11 of section 5 of the Boulder Canyon Project Act (43  
12 U.S.C. 617d)); and

13 (2) without limit as to term.

14 (c) RATIFICATION.—

15 (1) IN GENERAL.—Except to the extent that  
16 any provision of the Contract conflicts with a provi-  
17 sion of this Act, the Contract is authorized, ratified,  
18 and confirmed.

19 (2) AMENDMENTS.—Any amendment to the  
20 Contract is authorized, ratified, and confirmed, to  
21 the extent that such an amendment is executed to  
22 make the Contract consistent with this Act.

23 (d) EXECUTION OF CONTRACT.—To the extent that  
24 the Contract does not conflict with this Act, the Secretary  
25 shall execute the Contract.

1       (e) PAYMENT OF CHARGES.—The Tribe, and any re-  
2       cipient of tribal CAP water through a contract or option  
3       to lease or exchange, shall not be obligated to pay a water  
4       service capital charge or any other charge, payment, or  
5       fee for CAP water, except as provided in an applicable  
6       lease or exchange agreement.

7       (f) PROHIBITIONS.—

8           (1) USE OUTSIDE STATE.—No tribal CAP  
9       water may be leased, exchanged, forborne, or other-  
10      wise transferred by the Tribe in any way for use di-  
11      rectly or indirectly outside the State.

12          (2) USE OFF RESERVATION.—Except as author-  
13      ized by this section and paragraph 4.7 of the Agree-  
14      ment, no tribal water rights under this Act may be  
15      sold, leased, transferred, or used outside the bound-  
16      aries of the reservation or off-reservation trust land  
17      other than pursuant to an exchange.

18          (3) AGREEMENTS WITH ARIZONA WATER BANK-  
19      ING AUTHORITY.—Nothing in this Act or the Agree-  
20      ment limits the right of the Tribe to enter into an  
21      agreement with the Arizona Water Banking Author-  
22      ity established by section 45–2421 of the Arizona  
23      Revised Statutes (or any successor entity), in ac-  
24      cordance with State law.

25      (g) LEASES.—

1           (1) IN GENERAL.—To the extent the leases of  
2       tribal CAP Water by the Tribe to the District and  
3       to any of the cities, attached as exhibits to the  
4       Agreement, are not in conflict with the provisions of  
5       this Act—

6           (A) those leases are authorized, ratified,  
7       and confirmed; and

8           (B) the Secretary shall execute the leases.

9           (2) AMENDMENTS.—To the extent that amend-  
10      ments are executed to make the leases described in  
11      paragraph (1) consistent with this Act, those amend-  
12      ments are authorized, ratified, and confirmed.

13 **SEC. 7. AUTHORIZATION OF RURAL WATER SYSTEM.**

14       (a) IN GENERAL.—Subject to the availability of ap-  
15      propriations, the Secretary, acting through the Bureau,  
16      shall plan, design, construct, operate, maintain, replace,  
17      and rehabilitate the WMAT rural water system as gen-  
18      erally described in the project extension report dated Feb-  
19      ruary 2007.

20       (b) COMPONENTS.—The WMAT rural water system  
21      under subsection (a) shall consist of—

22           (1) a dam and storage reservoir, pumping  
23      plant, and treatment facilities located along the  
24      North Fork White River near the community of  
25      Whiteriver;

1           (2) pipelines extending from the water treat-  
2           ment plants to existing water distribution systems  
3           serving the Whiteriver, Carrizo, and Cibecue areas,  
4           together with other communities along the pipeline;

5           (3) connections to existing distribution facili-  
6           ties, including public and private water systems in  
7           existence on the date of enactment of this Act;

8           (4) appurtenant buildings and access roads;

9           (5) electrical power transmission and distribu-  
10          tion facilities necessary for services to rural water  
11          system facilities;

12          (6) all property and property rights necessary  
13          for the facilities described in this subsection; and

14          (7) such other project components as the Sec-  
15          retary determines to be appropriate to meet the  
16          water supply, economic, public health, and environ-  
17          mental needs of the portions of the reservation  
18          served by the WMAT rural water system, including  
19          water storage tanks, water lines, and other facilities  
20          for the Tribe and the villages and towns on the res-  
21          ervation.

22          (c) SERVICE AREA.—The service area of the WMAT  
23          rural water system shall be as described in the Project  
24          Extension report dated February 2007.

1 (d) CONSTRUCTION REQUIREMENTS.—The compo-  
2 nents of the WMAT rural water system shall be planned  
3 and constructed to a size that is sufficient to meet the  
4 municipal, rural, and industrial water supply requirements  
5 of the WMAT rural water system service area during the  
6 period beginning on the date of enactment of this Act and  
7 ending not earlier than December 31, 2040.

8 (e) TITLE.—

9 (1) IN GENERAL.—Title to the WMAT rural  
10 water system shall be held in trust by the United  
11 States in its capacity as trustee for the Tribe.

12 (2) CONVEYANCE TO TRIBE.—The Secretary  
13 may convey to the Tribe title to the WMAT rural  
14 water system after publication by the Secretary in  
15 the Federal Register of a statement of findings  
16 that—

17 (A) the designers' operating criteria,  
18 standing operating procedures, emergency ac-  
19 tion plan, and first filling and monitoring cri-  
20 teria are established and in place, and the  
21 WMAT rural water system has been declared  
22 substantially complete;

23 (B) the funds authorized to be appro-  
24 priated under section 12(b)(3)(B) have been ap-



1           appropriated and deposited in the WMAT Mainte-  
2           nance Fund; and

3                   (C) the Tribe has been operating success-  
4           fully under the established standing operating  
5           procedures for a period of 5 calendar years.

6           (3) ALIENATION AND TAXATION.—Conveyance  
7           of title to the Tribe pursuant to paragraph (2) does  
8           not waive or alter any applicable Federal law prohib-  
9           iting alienation or taxation of the WMAT rural  
10          water system or the underlying reservation land.

11          (f) TECHNICAL ASSISTANCE.—The Secretary shall  
12          provide such technical assistance as is necessary to enable  
13          the Tribe to plan, design, construct, operate, maintain,  
14          and replace the WMAT rural water system, including op-  
15          eration and management training.

16          (g) APPLICABILITY OF ISDEAA.—

17                  (1) AGREEMENT FOR SPECIFIC ACTIVITIES.—  
18          On receipt of a request of the Tribe, and in accord-  
19          ance with the Indian Self-Determination and Edu-  
20          cation Assistance Act (25 U.S.C. 450 et seq.), the  
21          Secretary shall enter into an agreement with the  
22          Tribe to carry out the activities authorized by this  
23          section.

24                  (2) CONTRACTS.—Any contract entered into  
25          pursuant to the Indian Self-Determination and Edu-

1 cation Assistance Act (25 U.S.C. 450 et seq.) for the  
2 purpose of carrying out any provision of this Act  
3 shall incorporate such provisions regarding periodic  
4 payment of funds, timing for use of funds, trans-  
5 parency, oversight, reporting, and accountability as  
6 the Secretary determines to be necessary (at the sole  
7 discretion of the Secretary) to ensure appropriate  
8 stewardship of Federal funds.

9 (h) CONDITION.—As a condition of construction of  
10 the facilities authorized by this section, the Tribe shall  
11 provide, at no cost to the Secretary, all land or interests  
12 in land, as appropriate, that the Secretary identifies as  
13 being necessary for those facilities.

14 (i) OPERATION AND MAINTENANCE.—Subject to the  
15 availability of appropriations as provided for in section  
16 12(e), the Secretary, acting through the Bureau, shall op-  
17 erate and maintain the WMAT rural water system until  
18 the date on which title to the WMAT rural water system  
19 is conveyed to the Tribe pursuant to subsection (e)(2).

20 **SEC. 8. SATISFACTION OF CLAIMS.**

21 (a) IN GENERAL.—The benefits realized by the Tribe  
22 and its members under this Act shall be in full satisfaction  
23 of all claims of the Tribe and its members for water rights  
24 and injury to water rights, except as set forth in the

1 Agreement, under Federal, State, or other law with re-  
2 spect to the reservation and off-reservation trust land.

3 (b) USES OF WATER.—All uses of water on land out-  
4 side of the reservation, if and when such land is subse-  
5 quently and finally determined to be part of the reserva-  
6 tion through resolution of any dispute between the Tribe  
7 and the United States over the location of the reservation  
8 boundary, and any fee land within the reservation put into  
9 trust and made part of the reservation, shall be subject  
10 to the maximum annual diversion amounts and the max-  
11 imum annual depletion amounts specified in the Agree-  
12 ment.

13 (c) NO RECOGNITION OF WATER RIGHTS.—Notwith-  
14 standing subsection (a), nothing in this Act has the effect  
15 of recognizing or establishing any right of a member of  
16 the Tribe to water on the reservation.

17 **SEC. 9. WAIVER AND RELEASE OF CLAIMS.**

18 (a) IN GENERAL.—

19 (1) CLAIMS AGAINST THE STATE AND OTH-  
20 ERS.—Except as provided in subsection (b)(1), the  
21 Tribe, on behalf of itself and its members, and the  
22 United States, acting in its capacity of trustee for  
23 the Tribe and its members, as part of the perform-  
24 ance of their obligations under the Agreement, are  
25 authorized to execute a waiver and release of any

1 claims against the State (or any agency or political  
2 subdivision of the State), or any other person, enti-  
3 ty, corporation, or municipal corporation under Fed-  
4 eral, State, or other law for all—

5 (A)(i) past, present, and future claims for  
6 water rights for the reservation and off-reserva-  
7 tion trust land arising from time immemorial  
8 and, thereafter, forever; and

9 (ii) past, present, and future claims for  
10 water rights arising from time immemorial and,  
11 thereafter, forever, that are based on aboriginal  
12 occupancy of land by the Tribe, its members, or  
13 their predecessors;

14 (B)(i) past and present claims for injury to  
15 water rights for the reservation and off-reserva-  
16 tion trust land arising from time immemorial  
17 through the enforceability date;

18 (ii) past, present, and future claims for in-  
19 jury to water rights arising from time immemo-  
20 rial and, thereafter, forever, that are based on  
21 aboriginal occupancy of land by the Tribe and  
22 its members, or their predecessors; and

23 (iii) claims for injury to water rights aris-  
24 ing after the enforceability date for the reserva-  
25 tion and off-reservation trust land resulting

1 from off-reservation diversion or use of water in  
2 a manner not in violation of the Agreement or  
3 State law; and

4 (C) past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this Act.

9 (2) CLAIMS AGAINST TRIBE.—Except as provided in subsection (b)(3), the United States, in all  
10 its capacities (except as trustee for an Indian tribe  
11 other than the Tribe), as part of the performance of  
12 its obligations under the Agreement, is authorized to  
13 execute a waiver and release of any and all claims  
14 against the Tribe, its members, or any agency, official, or employee of the Tribe, under Federal, State,  
15 or any other law for all—

18 (A) past and present claims for injury to  
19 water rights resulting from the diversion or use  
20 of water on the reservation and on off-reservation trust land arising from time immemorial  
21 through the enforceability date;

23 (B) claims for injury to water rights arising after the enforceability date resulting from  
24 the diversion or use of water on the reservation  
25

1 and on off-reservation trust land in a manner  
2 not in violation of the Agreement; and

3 (C) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this Act.

8 (3) CLAIMS AGAINST UNITED STATES.—Except  
9 as provided in subsection (b)(2), the Tribe, on behalf  
10 of itself and its members, as part of the performance  
11 of the obligations of the Tribe under the Agreement,  
12 is authorized to execute a waiver and release of any  
13 claim against the United States, including agencies,  
14 officials, or employees of the United States (except  
15 in the capacity of the United States as trustee for  
16 other Indian tribes), under Federal, State, or other  
17 law for any and all—

18 (A)(i) past, present, and future claims for  
19 water rights for the reservation and off-reservation trust land arising from time immemorial  
20 and, thereafter, forever; and

22 (ii) past, present, and future claims for  
23 water rights arising from time immemorial and,  
24 thereafter, forever that are based on aboriginal

1 occupancy of land by the Tribe, its members, or  
2 their predecessors;

3 (B)(i) past and present claims relating in  
4 any manner to damages, losses, or injuries to  
5 water, water rights, land, or other resources  
6 due to loss of water or water rights (including  
7 damages, losses, or injuries to hunting, fishing,  
8 gathering, or cultural rights due to loss of  
9 water or water rights, claims relating to inter-  
10 ference with, diversion, or taking of water, or  
11 claims relating to failure to protect, acquire, or  
12 develop water, water rights, or water infrastruc-  
13 ture) within the reservation and off-reservation  
14 trust land that first accrued at any time prior  
15 to the enforceability date;

16 (ii) past, present, and future claims for in-  
17 jury to water rights arising from time immemo-  
18 rial and, thereafter, forever that are based on  
19 aboriginal occupancy of land by the Tribe, its  
20 members, or their predecessors; and

21 (iii) claims for injury to water rights aris-  
22 ing after the enforceability date for the reserva-  
23 tion and off-reservation trust land resulting  
24 from the off-reservation diversion or use of

1 water in a manner not in violation of the Agree-  
2 ment or applicable law;

3 (C) past, present, and future claims aris-  
4 ing out of or relating in any manner to the ne-  
5 gotiation, execution, or adoption of the Agree-  
6 ment, an applicable settlement judgment or de-  
7 cree, or this Act;

8 (D) past and present claims relating in any  
9 manner to pending litigation of claims relating  
10 to the water rights of the Tribe for the reserva-  
11 tion and off-reservation trust land;

12 (E) past and present claims relating to the  
13 operation, maintenance, and replacement of ex-  
14 isting irrigation systems on the reservation con-  
15 structed prior to the enforceability date that  
16 first accrued at any time prior to the enforce-  
17 ability date, which waiver shall only become ef-  
18 fective on the full appropriation and payment to  
19 the Tribe of \$4,950,000 authorized by section  
20 12(b)(2)(B);

21 (F) future claims relating to operation,  
22 maintenance, and replacement of the WMAT  
23 rural water system, which waiver shall only be-  
24 come effective on the full appropriation of funds  
25 authorized by section 12(b)(3)(B) and the de-



1           posit of those funds in the WMAT Maintenance  
2           Fund;

3                   (G) past and present breach of trust and  
4           negligence claims for damage to the land and  
5           natural resources of the Tribe caused by ripar-  
6           ian and other vegetative manipulation by the  
7           United States for the purpose of increasing  
8           water runoff from the reservation that first ac-  
9           crued at any time prior to the enforceability  
10          date; and

11                   (H) past and present claims for trespass,  
12          use, and occupancy of the reservation in, on,  
13          and along the Black River that first accrued at  
14          any time prior to the enforceability date.

15          (b) RESERVATION OF RIGHTS AND RETENTION OF  
16          CLAIMS.—

17                   (1) RESERVATION OF RIGHTS AND RETENTION  
18          OF CLAIMS BY TRIBE AND UNITED STATES.—

19                   (A) IN GENERAL.—Notwithstanding the  
20          waiver and release of claims authorized under  
21          subsection (a)(1), the Tribe, on behalf of itself  
22          and the members of the Tribe, and the United  
23          States, acting as trustee for the Tribe and  
24          members of the Tribe, shall retain any right—

1           (i) subject to subparagraph 16.9 of  
2           the Agreement, to assert claims for inju-  
3           ries to, and seek enforcement of, the rights  
4           of the Tribe and members of the Tribe  
5           under the Agreement or this Act in any  
6           Federal or State court of competent juris-  
7           diction;

8           (ii) to assert claims for injuries to,  
9           and seek enforcement of, the rights of the  
10          Tribe under the judgment and decree en-  
11          tered by the court in the Gila River adju-  
12          dication proceedings;

13          (iii) to assert claims for injuries to,  
14          and seek enforcement of, the rights of the  
15          Tribe under the judgment and decree en-  
16          tered by the court in the Little Colorado  
17          River adjudication proceedings;

18          (iv) to object to any claims by or for  
19          any other Indian tribe, Indian community  
20          or nation, or dependent Indian community,  
21          or the United States on behalf of such a  
22          tribe, community, or nation;

23          (v) to participate in the Gila River ad-  
24          judication proceedings and the Little Colo-  
25          rado River adjudication proceedings to the

1 extent provided in subparagraph 14.1 of  
2 the Agreement;

3 (vi) to assert any claims arising after  
4 the enforceability date for injury to water  
5 rights not specifically waived under this  
6 section;

7 (vii) to assert any past, present, or fu-  
8 ture claim for injury to water rights  
9 against any other Indian tribe, Indian  
10 community or nation, dependent Indian  
11 community, allottee, or the United States  
12 on behalf of such a tribe, community, na-  
13 tion, or allottee; and

14 (viii) to assert any past, present, or  
15 future claim for trespass, use, and occu-  
16 pancy of the reservation in, on, or along  
17 the Black River against Freeport-  
18 McMoRan Copper & Gold, Inc., Phelps  
19 Dodge Corporation, or Phelps Dodge  
20 Morenci, Inc. (or a predecessor or suc-  
21 cessor of those entities), including all sub-  
22 sidiaries and affiliates of those entities.

23 (B) AGREEMENT.—On terms acceptable to  
24 the Tribe and the United States, the Tribe and  
25 the United States are authorized to enter into

1 an agreement with Freeport-McMoRan Copper  
2 & Gold, Inc., Phelps Dodge Corporation, or  
3 Phelps Dodge Morenci, Inc. (or a predecessor  
4 or successor of those entities), including all sub-  
5 sidiaries and affiliates of those entities, to re-  
6 solve the claims of the Tribe relating to the  
7 trespass, use, and occupancy of the reservation  
8 in, on, and along the Black River.

9 (2) RESERVATION OF RIGHTS AND RETENTION  
10 OF CLAIMS BY TRIBE AGAINST UNITED STATES.—

11 Notwithstanding the waiver and release of claims  
12 authorized under subsection (a)(3), the Tribe, on be-  
13 half of itself and the members of the Tribe, shall re-  
14 tain any right—

15 (A) subject to subparagraph 16.9 of the  
16 Agreement, to assert claims for injuries to, and  
17 seek enforcement of, the rights of the Tribe and  
18 members under the Agreement or this Act, in  
19 any Federal or State court of competent juris-  
20 diction;

21 (B) to assert claims for injuries to, and  
22 seek enforcement of, the rights of the Tribe and  
23 members under the judgment and decree en-  
24 tered by the court in the Gila River adjudica-  
25 tion proceedings;

1 (C) to assert claims for injuries to, and  
2 seek enforcement of, the rights of the Tribe and  
3 members under the judgment and decree en-  
4 tered by the court in the Little Colorado River  
5 adjudication proceedings;

6 (D) to object to any claims by or for any  
7 other Indian tribe, Indian community or nation,  
8 dependent Indian community, or the United  
9 States on behalf of such a tribe, community, or  
10 nation;

11 (E) to assert past, present, or future  
12 claims for injury to water rights or any other  
13 claims other than a claim to water rights,  
14 against any other Indian tribe, Indian commu-  
15 nity or nation, dependent Indian community, or  
16 the United States on behalf of such a tribe,  
17 community, or nation;

18 (F) to assert claims arising after the en-  
19 forceability date for injury to water rights re-  
20 sulting from the drilling of wells or pumping of  
21 water from land located within national forest  
22 land as of the effective date of the Agreement  
23 in the south  $\frac{1}{2}$  of T. 9 N., R. 24 E.; south  $\frac{1}{2}$   
24 of T. 9 N., R. 25 E.; north  $\frac{1}{2}$  of T. 8 N., R.  
25 24 E.; north  $\frac{1}{2}$  of T. 8 N., R. 25 E., if—

1 (i) title to that land is no longer re-  
2 tained by the United States; or

3 (ii) water from that land is trans-  
4 ported off the land for municipal or indus-  
5 trial use;

6 (G) to assert any claims arising after the  
7 enforceability date for injury to water rights not  
8 specifically waived under this section;

9 (H) to assert any other claims not specifi-  
10 cally waived under this section; and

11 (I) to assert any claim arising after the en-  
12 forceability date for a future taking by the  
13 United States of reservation land, off-reserva-  
14 tion trust land, or any property rights appur-  
15 tenant to that land, including any water rights  
16 set forth in paragraph 4.0 of the Agreement.

17 (3) RESERVATION OF RIGHTS AND RETENTION  
18 OF CLAIMS BY UNITED STATES.—Notwithstanding  
19 the waiver and release of claims authorized under  
20 subsection (a)(2), the United States shall retain any  
21 right to assert any claim not specifically waived in  
22 that subsection.

23 (c) EFFECTIVENESS OF WAIVER AND RELEASES.—  
24 Except as otherwise specifically provided in subparagraphs  
25 (E) and (F) of subsection (a)(3), the waivers and releases

1 under subsection (a) shall become effective on the enforce-  
2 ability date.

3 (d) ENFORCEABILITY DATE.—

4 (1) IN GENERAL.—This section takes effect on  
5 the date on which the Secretary publishes in the  
6 Federal Register a statement of findings that—

7 (A)(i) to the extent the Agreement con-  
8 flicts with this Act, the Agreement has been re-  
9 vised through an amendment to eliminate the  
10 conflict; and

11 (ii) the Agreement, as so revised, has been  
12 executed by the Secretary, the Tribe, and the  
13 Governor of the State;

14 (B) the Secretary has fulfilled the require-  
15 ments of sections 5 and 6;

16 (C) the amount authorized by section  
17 12(a) has been deposited in the White Moun-  
18 tain Apache Tribe Water Rights Settlement  
19 Subaccount;

20 (D) the State funds described in subpara-  
21 graph 13.3 of the Agreement have been depos-  
22 ited in the White Mountain Apache Tribe  
23 Water Rights Settlement Subaccount;

24 (E) the Secretary has issued a record of  
25 decision approving the construction of the

1           WMAT rural water system in a configuration  
2           substantially similar to that described in section  
3           7; and

4           (F) the judgments and decrees substan-  
5           tially in the form of those attached to the  
6           Agreement as exhibits 12.9.6.1 and 12.9.6.2  
7           have been approved by the respective trial  
8           courts.

9           (2) FAILURE OF ENFORCEABILITY DATE TO  
10          OCCUR.—If, because of the failure of the enforce-  
11          ability date to occur by April 30, 2020, this section  
12          does not become effective, the Tribe and its mem-  
13          bers, and the United States, acting in the capacity  
14          of trustee for the Tribe and its members, shall re-  
15          tain the right to assert past, present, and future  
16          water rights claims and claims for injury to water  
17          rights for the reservation and off-reservation trust  
18          land.

19          (3) NO RIGHTS TO WATER.—On the occurrence  
20          of the enforceability date, all land held by the  
21          United States in trust for the Tribe and its members  
22          shall have no rights to water other than those spe-  
23          cifically quantified for the Tribe and the United  
24          States, acting in the capacity of trustee for the  
25          Tribe and its members, for the reservation and off-



1 reservation trust land pursuant to paragraph 4.0 of  
2 the Agreement.

3 (e) UNITED STATES ENFORCEMENT AUTHORITY.—

4 Nothing in this Act or the Agreement affects any right  
5 of the United States to take any action, including environ-  
6 mental actions, under any laws (including regulations and  
7 the common law) relating to human health, safety, or the  
8 environment.

9 (f) NO EFFECT ON WATER RIGHTS.—Except as pro-  
10 vided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and  
11 (3)(B)(ii) of subsection (a), nothing in this Act affects any  
12 rights to water of the Tribe, its members, or the United  
13 States acting as trustee for the Tribe and members, for  
14 land outside the boundaries of the reservation or the off-  
15 reservation trust land.

16 (g) ENTITLEMENTS.—Any entitlement to water of  
17 the Tribe, its members, or the United States acting as  
18 trustee for the Tribe and members, relating to the reserva-  
19 tion or off-reservation trust land shall be satisfied from  
20 the water resources granted, quantified, confirmed, or rec-  
21 ognized with respect to the Tribe, members, and the  
22 United States by the Agreement and this Act.

23 (h) OBJECTION PROHIBITED.—Except as provided in  
24 subsection (b)(2)(F), the Tribe and the United States act-  
25 ing as trustee for the Tribe shall not—

1           (1) object to the usage of any well located out-  
2           side the boundaries of the reservation or the off-res-  
3           ervation trust land, as in existence on the enforce-  
4           ability date; or

5           (2) object to, dispute, or challenge after the en-  
6           forceability date the drilling of any well or the with-  
7           drawal and use of water from any well in the Little  
8           Colorado River adjudication proceedings, the Gila  
9           River adjudication proceedings, or any other judicial  
10          or administrative proceeding.

11 **SEC. 10. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS**  
12 **SETTLEMENT SUBACCOUNT.**

13          (a) ESTABLISHMENT.—There is established in the  
14 Lower Colorado River Basin Development Fund a sub-  
15 account to be known as the “White Mountain Apache  
16 Tribe Water Rights Settlement Subaccount”, consisting  
17 of—

18           (1) the amounts made available under sub-  
19           section (e);

20           (2) the amounts appropriated to the subaccount  
21           pursuant to subsections (a) and (d) of section 12, as  
22           applicable; and

23           (3) such other amounts as are available includ-  
24           ing the funds provided in subparagraph 13.3 of the  
25           Agreement.

1 (b) EXPENDITURES AND WITHDRAWALS.—

2 (1) CONTRACTS.—

3 (A) IN GENERAL.—The Tribe may with-  
4 draw any portion of the White Mountain  
5 Apache Tribe Water Rights Settlement Sub-  
6 account on approval by the Secretary pursuant  
7 to the terms of an agreement entered into  
8 under section 7(g).

9 (B) REQUIREMENTS.—An agreement en-  
10 tered into under section 7(g) shall require that  
11 the Tribe shall use the amounts in the White  
12 Mountain Apache Tribe Water Rights Settle-  
13 ment Subaccount only for the planning, design,  
14 and construction of the rural water system, in-  
15 cluding such sums as are necessary—

16 (i) for the Bureau to carry out over-  
17 sight of the planning, design, and con-  
18 struction of the rural water system;

19 (ii) to repay any outstanding balance  
20 on the loan authorized by the White Moun-  
21 tain Apache Tribe Rural Water System  
22 Loan Authorization Act (Public Law 110–  
23 390; 122 Stat. 4191); and

24 (iii) to carry out all required environ-  
25 mental compliance activities associated

1 with the planning, design, and construction  
2 of the rural water system.

3 (2) ENFORCEMENT.—The Secretary may pur-  
4 sue such judicial remedies and carry out such ad-  
5 ministrative actions as are necessary to enforce an  
6 agreement described in paragraph (1) to ensure that  
7 amounts in the White Mountain Apache Tribe Water  
8 Rights Settlement Subaccount are used in accord-  
9 ance with this section.

10 (3) LIABILITY.—On withdrawal by the Tribe of  
11 amounts in the White Mountain Apache Tribe Water  
12 Rights Settlement Subaccount, the Secretary and  
13 the Secretary of the Treasury shall not retain liabil-  
14 ity for the expenditure or investment of those  
15 amounts.

16 (4) EXPENDITURE PLAN.—

17 (A) IN GENERAL.—The Tribe shall submit  
18 to the Secretary for approval an expenditure  
19 plan for any portion of the amounts in the sub-  
20 account under this section that the Tribe does  
21 not withdraw pursuant to this subsection.

22 (B) DESCRIPTION.—The expenditure plan  
23 shall describe the manner in which, and the  
24 purposes for which, the amounts remaining in  
25 the subaccount will be used.

1 (C) APPROVAL.—The Secretary shall ap-  
2 prove an expenditure plan under this paragraph  
3 if the Secretary determines that the plan is—

4 (i) reasonable; and

5 (ii) consistent with this Act.

6 (5) ANNUAL REPORTS.—The Tribe shall submit  
7 to the Secretary an annual report that describes  
8 each expenditure from the White Mountain Apache  
9 Tribe Water Rights Settlement Subaccount during  
10 the year covered by the report.

11 (c) PROHIBITION ON PER CAPITA DISTRIBUTIONS.—  
12 No amount of the principal, or the interest or income ac-  
13 cruing on the principal, of the White Mountain Apache  
14 Tribe Water Rights Settlement Subaccount shall be dis-  
15 tributed to any member of the Tribe on a per capita basis.

16 (d) AVAILABILITY OF FUNDS.—

17 (1) IN GENERAL.—Amounts in the White  
18 Mountain Apache Tribe Water Rights Settlement  
19 Subaccount shall not be available for expenditure or  
20 withdrawal by the Tribe until the enforceability date.

21 (2) INVESTMENT.—The Secretary shall invest  
22 the amounts in the White Mountain Apache Tribe  
23 Water Rights Settlement Subaccount in accordance  
24 with section 403(f)(4) of the Colorado River Basin  
25 Project Act (43 U.S.C. 1543(f)(4)).

1           (3) USE OF INTEREST.—The interest accrued  
2           on amounts invested under paragraph (2) shall not  
3           be available for expenditure or withdrawal until the  
4           later of—

5                       (A) November 1, 2019; and

6                       (B) the enforceability date.

7           (e) LOWER COLORADO RIVER BASIN DEVELOPMENT  
8   FUND.—

9           (1) IN GENERAL.—Of amounts in the Lower  
10          Colorado River Basin Development Fund made  
11          available under section 403(f)(2)(D)(vi) of the Colo-  
12          rado River Basin Project Act (43 U.S.C. 1543  
13          (f)(2)(D)(vi)), an amount equal to the difference be-  
14          tween the balance of the White Mountain Apache  
15          Tribe Settlement Subaccount (as of November 1,  
16          2019), and the amount authorized to be appro-  
17          priated under section 12(a)(1), but not to exceed  
18          \$100,000,000, shall be deposited, without further  
19          appropriation, in the White Mountain Apache Tribe  
20          Settlement Subaccount.

21          (2) AVAILABILITY OF FUNDS.—The funds au-  
22          thorized to be deposited in the White Mountain  
23          Apache Tribe Settlement Subaccount pursuant to  
24          paragraph (1) shall not be available for expenditure  
25          or withdrawal until the later of—

1 (A) November 1, 2019; and

2 (B) the enforceability date.

3 **SEC. 11. MISCELLANEOUS PROVISIONS.**

4 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

5 (1) IN GENERAL.—In the case of a civil action  
6 described in paragraph (2)—

7 (A) the United States or the Tribe, or  
8 both, may be joined in the civil action; and

9 (B) any claim by the United States or the  
10 Tribe to sovereign immunity from the civil ac-  
11 tion is waived for the sole purpose of resolving  
12 any issue regarding the interpretation or en-  
13 forcement of this Act or the Agreement.

14 (2) DESCRIPTION OF CIVIL ACTION.—A civil ac-  
15 tion referred to in paragraph (1) is a civil action  
16 filed—

17 (A) by any party to the Agreement or sig-  
18 natory to an exhibit to the Agreement in a  
19 United States or State court that—

20 (i) relates solely and directly to the in-  
21 terpretation or enforcement of this Act or  
22 the Agreement; and

23 (ii) names as a party the United  
24 States or the Tribe; or

(B) by a landowner or water user in the Gila River basin or Little Colorado River basin in the State that—

(i) relates solely and directly to the interpretation or enforcement of section 9 of this Act and paragraph 12.0 of the Agreement; and

(ii) names as a party the United States or the Tribe.

(b) EFFECT OF ACT.—Nothing in this Act quantifies or otherwise affects any water right or claim or entitlement to water of any Indian tribe, band, or community other than the Tribe.

(c) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any amount paid to the Tribe by any party to the Agreement other than the United States; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Tribe shall indemnify the United States, and hold the United States



1 harmless, with respect to any claim (including claims  
2 for takings or breach of trust) arising out of the re-  
3 ceipt or expenditure of funds described in paragraph  
4 (1)(A).

5 (d) APPLICABILITY OF RECLAMATION REFORM  
6 ACT.—The Reclamation Reform Act of 1982 (43 U.S.C.  
7 390aa et seq.) and any other acreage limitation or full-  
8 cost pricing provision under Federal law shall not apply  
9 to any individual, entity, or land solely on the basis of—

10 (1) receipt of any benefit under this Act;

11 (2) the execution or performance of the Agree-  
12 ment; or

13 (3) the use, storage, delivery, lease, or exchange  
14 of CAP water.

15 (e) SECRETARIAL POWER SITES.—The portions of  
16 the following named secretarial power site reserves that  
17 are located on the Fort Apache Indian Reservation or the  
18 San Carlos Apache Reservation, as applicable, shall be  
19 transferred and restored into the name of the Tribe or  
20 the San Carlos Apache Tribe, respectively:

21 (1) Lower Black River (T. 3 N., R. 26 E.; T.  
22 3 N., R. 27 E.).

23 (2) Black River Pumps (T. 2 N., R. 25 E.; T.  
24 2 N., R. 26 E.; T. 3 N., R. 26 E.).

1 (3) Carrizo (T. 4 N., R. 20 E.; T. 4 N., R. 21  
 2 E.; T. 4½ N., R. 19 E.; T. 4½ N., R. 20 E.; T.  
 3 4½ N., R. 21 E.; T. 5 N., R. 19 E.).

4 (4) Knob (T. 5 N., R. 18 E.; T. 5 N., R. 19  
 5 E.).

6 (5) Walnut Canyon (T. 5 N., R. 17 E.; T. 5 N.,  
 7 R. 18 E.).

8 (6) Gleason Flat (T. 4½ N., R. 16 E.; T. 5 N.,  
 9 R. 16 E.).

10 (f) NO EFFECT ON FUTURE ALLOCATIONS.—Water  
 11 received under a lease or exchange of tribal CAP water  
 12 under this Act shall not affect any future allocation or  
 13 reallocation of CAP water by the Secretary.

14 (g) AFTER-ACQUIRED TRUST LAND.—

15 (1) REQUIREMENT OF ACT OF CONGRESS.—

16 (A) LEGAL TITLE.—After the enforce-  
 17 ability date, if the Tribe seeks to have legal title  
 18 to additional land in the State of Arizona lo-  
 19 cated outside the exterior boundaries of the res-  
 20 ervation taken into trust by the United States  
 21 for its benefit, the Tribe may do so only pursu-  
 22 ant to an Act of Congress specifically author-  
 23 izing the transfer for the benefit of the Tribe.

24 (B) EXCEPTIONS.—Subparagraph (A)  
 25 shall not apply to—

1 (i) restoration of land to the reserva-  
2 tion subsequently and finally determined to  
3 be part of the reservation through resolu-  
4 tion of any dispute between the Tribe and  
5 the United States over the location of the  
6 reservation boundary unless required by  
7 Federal law; or

8 (ii) off-reservation trust land acquired  
9 prior to January 1, 2008.

10 (2) WATER RIGHTS.—

11 (A) IN GENERAL.—Under this section,  
12 after-acquired trust land outside the reservation  
13 shall not include federally reserved rights to  
14 surface water or groundwater.

15 (B) RESTORED LAND.—Land restored to  
16 the reservation as the result of resolution of any  
17 reservation boundary dispute between the Tribe  
18 and the United States, or any fee simple land  
19 within the reservation that are placed into  
20 trust, shall have water rights pursuant to sec-  
21 tion 8(b).

22 (3) ACCEPTANCE OF LAND IN TRUST STATUS.—

23 (A) IN GENERAL.—If the Tribe acquires  
24 legal fee title to land that is located within the  
25 exterior boundaries of the reservation, the Sec-

1           retary shall accept the land in trust status for  
2           the benefit of the Tribe in accordance with ap-  
3           plicable Federal law (including regulations) for  
4           such real estate acquisitions.

5           (B) RESERVATION STATUS.—Land taken  
6           or held in trust by the Secretary under para-  
7           graph (3), or restored to the reservation as a  
8           result of resolution of a boundary dispute be-  
9           tween the Tribe and the United States, shall be  
10          deemed to be part of the reservation.

11          (h) CONFORMING AMENDMENT.—Section 3(b)(2) of  
12          the White Mountain Apache Tribe Rural Water System  
13          Loan Authorization Act (Public Law 110–390; 122 Stat.  
14          4191) is amended by striking “January 1, 2013” and in-  
15          serting “May 1, 2020”.

16       **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

17          (a) RURAL WATER SYSTEM.—

18               (1) IN GENERAL.—There is authorized to be  
19               appropriated for the planning, engineering, design,  
20               environmental compliance, and construction of the  
21               WMAT rural water system \$126,193,000.

22               (2) INCLUSIONS.—The amount authorized to be  
23               appropriated under paragraph (1) shall include such  
24               sums as are necessary, but not to exceed 4 percent  
25               of construction contract costs, for the Bureau to

1 carry out oversight of activities for planning, design,  
 2 environmental compliance, and construction of the  
 3 rural water system.

4 (b) WMAT SETTLEMENT AND MAINTENANCE  
 5 FUNDS.—

6 (1) DEFINITION OF FUNDS.—In this sub-  
 7 section, the term “Funds” means—

8 (A) the WMAT Settlement Fund estab-  
 9 lished by paragraph (2)(A); and

10 (B) the WMAT Maintenance Fund estab-  
 11 lished by paragraph (3)(A).

12 (2) WMAT SETTLEMENT FUND.—

13 (A) ESTABLISHMENT.—There is estab-  
 14 lished in the Treasury of the United States a  
 15 fund to be known as the “WMAT Settlement  
 16 Fund”, consisting of such amounts as are de-  
 17 posited in the fund under subparagraph (B), to-  
 18 gether with any interest accrued on those  
 19 amounts, for use by the Tribe in accordance  
 20 with subparagraph (C).

21 (B) TRANSFERS TO FUND.—There is au-  
 22 thorized to be appropriated to the Secretary  
 23 \$113,500,000 for deposit in the WMAT Settle-  
 24 ment Fund, of which not less than \$4,950,000

1 shall be used for the rehabilitation of existing  
2 irrigation systems.

3 (C) USE OF FUNDS.—The Tribe shall use  
4 amounts in the WMAT Settlement Fund for  
5 any of the following purposes:

6 (i) Fish production, including hatch-  
7 eries.

8 (ii) Rehabilitation of recreational  
9 lakes and existing irrigation systems.

10 (iii) Water-related economic develop-  
11 ment projects.

12 (iv) Protection, restoration, and eco-  
13 nomic development of forest and watershed  
14 health.

15 (v) Any cost overruns for the comple-  
16 tion of the WMAT rural water system, as  
17 provided in subsection (f).

18 (3) WMAT MAINTENANCE FUND.—

19 (A) ESTABLISHMENT.—There is estab-  
20 lished in the Treasury of the United States a  
21 fund to be known as the “WMAT Maintenance  
22 Fund”, consisting of such amounts as are de-  
23 posited in the fund under subparagraph (B), to-  
24 gether with any interest accrued on those

1 amounts, for use by the Tribe in accordance  
2 with subparagraph (C).

3 (B) TRANSFERS TO FUND.—There is au-  
4 thorized to be appropriated to the Secretary  
5 \$50,000,000 for deposit in the WMAT Mainte-  
6 nance Fund.

7 (C) USE OF FUNDS.—The Tribe or the  
8 Secretary, as applicable, shall use amounts in  
9 the WMAT Maintenance Fund only for the op-  
10 eration, maintenance, and replacement costs as-  
11 sociated with the delivery of water through the  
12 rural water system.

13 (4) ADMINISTRATION.—The Secretary shall  
14 manage the Funds in accordance with the American  
15 Indian Trust Fund Management Reform Act of  
16 1994 (25 U.S.C. 4001 et seq.), including by invest-  
17 ing amounts in the Funds in accordance with—

18 (A) the Act of April 1, 1880 (25 U.S.C.  
19 161); and

20 (B) the first section of the Act of June 24,  
21 1938 (25 U.S.C. 162a).

22 (5) AVAILABILITY OF AMOUNTS FROM  
23 FUNDS.—Amounts in the Funds shall be available  
24 for expenditure or withdrawal only after the enforce-  
25 ability date in accordance with subsection (g).

1           (6) EXPENDITURE AND WITHDRAWAL.—

2               (A) TRIBAL MANAGEMENT PLAN.—

3                   (i) IN GENERAL.—The Tribe may  
4                   withdraw all or part of amounts in the  
5                   Funds on approval by the Secretary of a  
6                   tribal management plan as described in the  
7                   American Indian Trust Fund Management  
8                   Reform Act of 1994 (25 U.S.C. 4001 et  
9                   seq.).

10                  (ii) REQUIREMENTS.—In addition to  
11                  the requirements under the American In-  
12                  dian Trust Fund Management Reform Act  
13                  of 1994 (25 U.S.C. 4001 et seq.), a tribal  
14                  management plan under this subparagraph  
15                  shall require that the Tribe shall spend  
16                  any amounts withdrawn from the Funds in  
17                  accordance with the purposes described in  
18                  paragraph (2)(C) or (3)(C).

19                  (iii) ENFORCEMENT.—The Secretary  
20                  may take judicial or administrative action  
21                  to enforce the provisions of a tribal man-  
22                  agement plan under this subparagraph to  
23                  ensure that any amounts withdrawn from  
24                  the Funds under the plan are used in ac-  
25                  cordance with this Act and the Agreement.



1           (iv) LIABILITY.—If the Tribe exer-  
2           cises the right to withdraw amounts from  
3           the Funds, neither the Secretary nor the  
4           Secretary of the Treasury shall retain any  
5           liability for the expenditure or investment  
6           of the amounts.

7           (B) EXPENDITURE PLAN.—

8           (i) IN GENERAL.—The Tribe shall  
9           submit to the Secretary for approval an ex-  
10          penditure plan for any portion of the  
11          amounts in the Funds that the Tribe does  
12          not withdraw under the tribal management  
13          plan.

14          (ii) DESCRIPTION.—The expenditure  
15          plan shall describe the manner in which,  
16          and the purposes for which, amounts of  
17          the Tribe remaining in the Funds will be  
18          used.

19          (iii) APPROVAL.—On receipt of an ex-  
20          penditure plan under clause (i), the Sec-  
21          retary shall approve the plan if the Sec-  
22          retary determines that the plan is reason-  
23          able and consistent with this Act and the  
24          Agreement.

1 (iv) ANNUAL REPORT.—For each of  
2 the Funds, the Tribe shall submit to the  
3 Secretary an annual report that describes  
4 all expenditures from the Fund during the  
5 year covered by the report.

6 (C) CERTAIN PER CAPITA DISTRIBUTIONS  
7 PROHIBITED.—No amount in the Funds shall  
8 be distributed to any member of the Tribe on  
9 a per capita basis.

10 (c) COST INDEXING.—All amounts authorized to be  
11 appropriated under subsections (a) and (b) shall be ad-  
12 justed as may be required to reflect the changes since Oc-  
13 tober 1, 2007, in the construction cost indices applicable  
14 to the types of construction involved in the construction  
15 of the WMAT rural water supply system, the maintenance  
16 of the rural water supply system, and the construction or  
17 rehabilitation of the other development projects authorized  
18 under subsection (b)(2)(C).

19 (d) EMERGENCY FUND FOR INDIAN SAFETY AND  
20 HEALTH.—

21 (1) DEFINITION OF EMERGENCY FUND FOR IN-  
22 DIAN SAFETY AND HEALTH.—In this subsection, the  
23 term “Emergency Fund for Indian Safety and  
24 Health” means the Emergency Fund for Indian  
25 Safety and Health established by section 601(a) of

1 the Tom Lantos and Henry J. Hyde United States  
2 Global Leadership Against HIV/AIDS, Tuberculosis,  
3 and Malaria Reauthorization Act of 2008 (22 U.S.C.  
4 7601 et seq.).

5 (2) INITIAL TRANSFER.—Not later than 90  
6 days after the date of enactment of this Act, such  
7 amounts as are available, but not to exceed  
8 \$50,000,000, in the Emergency Fund for Indian  
9 Safety and Health shall be transferred to the White  
10 Mountain Apache Tribe Water Rights Settlement  
11 Subaccount.

12 (3) SUBSEQUENT TRANSFER.—Effective begin-  
13 ning on January 1, 2012, if the Secretary deter-  
14 mines that, on an annual basis, the amount author-  
15 ized to be appropriated under subsection (a) will not  
16 be appropriated and deposited in the White Moun-  
17 tain Apache Tribe Water Rights Settlement Sub-  
18 account by October 31, 2012, not more than  
19 \$50,000,000 of the amounts in the Emergency Fund  
20 for Indian Safety and Health shall be transferred to  
21 the White Mountain Apache Tribe Water Rights  
22 Settlement Subaccount, as necessary to complete the  
23 WMAT rural water system project.

24 (4) LIMITATION.—The total amount transferred  
25 from the Emergency Fund for Indian Safety and

1 Health to the White Mountain Apache Tribe Water  
2 Rights Settlement Subaccount under paragraphs (2)  
3 and (3) shall not exceed \$100,000,000.

4 (e) OPERATION, MAINTENANCE, AND REPLACE-  
5 MENT.—

6 (1) IN GENERAL.—There is authorized to be  
7 appropriated to the Secretary \$2,500,000 for the op-  
8 eration, maintenance, and replacement costs of the  
9 WMAT rural water system, to remain available until  
10 the conditions described in subsection (g) have been  
11 met.

12 (2) SUBSEQUENT FUNDING.—Beginning on No-  
13 vember 1, 2019, or the enforceability date, whichever  
14 is later, the Tribe or the Secretary, as applicable,  
15 may use amounts deposited in the WMAT Mainte-  
16 nance Fund under subsection (b)(3)(B) for oper-  
17 ation, maintenance, and replacement costs of the  
18 WMAT rural water system.

19 (f) COST OVERRUNS.—On a determination by the  
20 Secretary that the amount authorized to be appropriated  
21 under subsection (a) is not sufficient for the completion  
22 of the WMAT rural water system, there are authorized  
23 to be appropriated such sums as are necessary, but not  
24 to exceed an additional \$25,000,000, to complete the  
25 WMAT rural water system, to be derived by transfer from

1 the amounts authorized to be appropriated to the Sec-  
2 retary for deposit in the WMAT Settlement Fund under  
3 subsection (b)(2)(B) in such amounts as the Secretary,  
4 in concurrence with the Tribe, determines to be appro-  
5 priate.

6 (g) CONDITIONS.—The amounts authorized to be ap-  
7 propriated to the Secretary for deposit in the WMAT  
8 Maintenance Fund, together with any interest accrued  
9 thereon, under subsection (b)(3), and any interest accru-  
10 ing on the WMAT Settlement Fund under subsection  
11 (b)(2), shall not be available for expenditure or withdrawal  
12 until the later of—

13 (1) November 1, 2019; and

14 (2) the date on which the Secretary determines  
15 that the conditions described in section 9(d) have  
16 been met.

17 **SEC. 13. ANTIDEFICIENCY.**

18 The United States shall not be liable for failure to  
19 carry out any obligation or activity authorized to be car-  
20 ried out, subject to appropriations, under this Act (includ-  
21 ing any such obligation or activity under the Agreement)  
22 if adequate appropriations for that purpose are not pro-  
23 vided by Congress.

1 **SEC. 14. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

2 If the Secretary fails to publish in the Federal Reg-  
3 ister a statement of findings as required under section  
4 9(d) by not later than April 30, 2020—

5 (1) effective beginning on May 1, 2020—

6 (A) this Act is repealed; and

7 (B) any action carried out by the Sec-  
8 retary, and any contract entered into, pursuant  
9 to this Act shall be void;

10 (2) any amounts appropriated under sub-  
11 sections (a), (b), (d), and (e) of section 12, together  
12 with any interest accrued on those amounts, shall  
13 immediately revert to the general fund of the Treas-  
14 ury; and

15 (3) any other amounts deposited in the White  
16 Mountain Apache Tribe Water Settlement Sub-  
17 account (including any amounts paid by the State in  
18 accordance with the Agreement), together with any  
19 interest accrued on those amounts, shall immediately  
20 be returned to the respective sources of those funds.

21 **SEC. 15. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

22 In carrying out this Act, the Secretary shall promptly  
23 comply with all applicable requirements of—

24 (1) the National Environmental Policy Act of  
25 1969 (42 U.S.C. 4321 et seq.);

- 1           (2) the Endangered Species Act of 1973 (16  
2   U.S.C. 1531 et seq.);  
3           (3) all other applicable Federal environmental  
4   laws; and  
5           (4) all regulations promulgated under the laws  
6   described in paragraphs (1) through (3).

Passed the House of Representatives January 21,  
2010.

Attest:

*Clerk.*

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

# H. R. 1065

## AN ACT

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.